

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DIEBOLD, INC.,

Plaintiff,

v.

CONTENT EXTRACTION AND
TRANSMISSION LLC, *et al.*,

Defendants.

No. 12-6960 (MAS) (TJB)

ORDER


This matter comes before the Court on Defendants' Motions to Dismiss Counts Three and Four of Plaintiff's First Amended Complaint. (ECF Nos. 40-41.) Plaintiff filed Opposition. (ECF No. 46-47.) Defendants Replied. (ECF Nos. 59-60.) Oral argument was held on October 2, 2013. The Court has carefully considered the Parties' submissions and the arguments of counsel put forth at oral argument. For the reasons set forth on the record, and other good cause shown,

IT IS, on this 7th day of October, 2013, **ORDERED** that:

- 1) Defendants' Motions to Dismiss are granted.
- 2) Plaintiff's First Amended Complaint is dismissed:
 - a. Plaintiff's first and second claims seeking a declaratory judgment regarding U.S. Patent Nos. 5,258,855, 5,369,508, 5,625,465, and 5,768,416 are dismissed with prejudice as moot in light of the Court's July 31, 2013 Opinion and Order. (ECF Nos. 76-77.)
 - b. Plaintiff's first and second claims seeking a declaratory judgment regarding U.S. Patent Nos. 6,094,505, 7,259,887, and 7,474,434 are dismissed without prejudice for lack of a current case or controversy.

c. Plaintiff's third and fourth claims alleging tortious interference and RICO are dismissed with prejudice due to the *Noerr-Pennington* doctrine.

- 3) Defendant CET's Counterclaim and Third Party Complaint (ECF No. 66) are dismissed.
- 4) Plaintiff's Motion to Strike (ECF No. 68) is administratively terminated as moot.
- 5) The Clerk is ordered to close this action.
- 6) This Order shall also be docketed in Civil Action Nos. 12-2501 and 12-6960.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE